more to be regretted that the point was not discussed. On the one side it might be truly said that the rule regarding declarations of intention is an iron-bound product of centuries, and not to be extended in courts of law beyond the exact case of two persons or things each meeting the description equally well. See Thayer, Preliminary Treatise on Evidence, pp. 417–445. On the other side the cases appear to be substantially the same, for words are but emblems of meaning, and their meaning here as indicated by the testator himself applies equally to the two persons. When the case is thus analyzed the distinction really seems "a distinction without a difference."

ACCESSION OF PROPERTY. — Where a substance is the product of the labor or property of two individuals, its ownership is a question to be determined by the rules of accession. Some courts have made the right of the injured party to claim the new article depend on the question whether the identity of his original materials can be made out by the senses. Such and other arbitrary distinctions based on mere physical reasons were wisely discarded by a more modern case. When the title to the new article is the point in issue, the first question must be, how much has each party contributed to make it what it is. If the converter by his labor has increased the value of the plaintiff's goods so greatly that it appears grossly unjust to deprive him of the new product, the former owner is precluded from appropriating it. On such reasoning as this Judge Cooley in *Wetherbee* v. *Green*, 22 Mich. 311, decided that an increase in value of twenty-eight times was sufficient to vest title in the taker. Such a ruling naturally leaves to the discretion of future courts the question of the exact ratio at which the balance will turn and the labor of the converter will belong to the owner of the goods. The case of *Eaton* v. *Langley*, 47 S. W. Rep. 123 (Ark.) supports the principles of *Wetherbee* v. *Green*. The defendant by mistake cut down the plaintiff's standing timber, and worked it into cross-ties. A resulting increase in value of six times the court held not sufficient to vest the title to the new product in the defendant. There was no contention that bad faith entered into the transaction, and it was not necessary for the court to discuss the questionable doctrine of *Silsbury* v. *McCoon*, 3 Comst. 378, that a wilful converter can never avail himself of the doctrines of accession.

If it is the object of the law to establish justice between the parties, why not hold them tenants-in-common in proportion to their respective contributions, instead of giving the whole mass to one or the other? The plaintiff, it may be argued, would then be fully compensated, without the defendant being unnecessarily punished. Such a result is recognized by the courts in the closely analogous subject of confusion of goods. The answer to this reasoning seems to be found in the distinction between accession and confusion. In the latter case the mass, being of the same nature as its original materials, is easily divisible. In the former the new product is rarely incapable of partition without its resulting destruction. In confusion the volume of the mixture being readily ascertainable by weight or measure, the rights of the parties are susceptible of easy adjustment, each taking the share of the whole which the law gives him. In accession, if both the converter and the injured party are to be given legal interests in new product, the principles of tenancy in common preclude the plaintiff from ever obtaining the chattel or any part of it. He is com-

pelled against his will to become a tenant-in-common out of possession. There seems, therefore, to be no escape from the doctrine of *Wetherbee* v. *Green*. Whether the actual result reached in the principal case is a correct one may still be doubtful. At a ratio of six to one the scales nearly balance.

DONATIO MORTIS CAUSA. — In the case of *Liebe* v. *Battman*, 54 Pac. Rep. 179, the Supreme Court of Oregon had occasion to apply to exceptional, as well as notorious facts the rule that a *donatio mortis causa* requires delivery. It appeared that one about to commit suicide indorsed a promissory note, sealed it in an envelope directed to a friend with whom he was living, and placed the envelope, together with a letter to the same friend, upon a table beside his bed. Then he shot himself. The friend came quickly from his room in an opposite part of the house, but the dying man, without further reference to the gift, soon passed into a comatose state from which he never rallied. It was held there had been no delivery in spite of the fact that the friend had picked up the envelope before the donor died, though after he became unconscious. The Court said, "There must be a parting with the dominion over the subject-matter of the gift with a present design that the title shall pass out of the donor and to the donee." The definition and the application of it seemed sound. Placing the addressed envelope on the table where it was directly at the hand of the donor could not amount to a giving up of dominion, and though possibly there was a change of possession before the death that was not enough. A transfer, a positive act of giving, a parting with dominion, — these require a corresponding intent which the unconscious man could not have had. *Leonard* v. *Administrators of Kebler*, 50 Ohio St. 444.

The facts suggest another case far more difficult, — where the document is mailed by the man about to die, but he becomes unconscious before it is actually received. There, with full intent, he has actually set in motion the machinery which was to complete the gift, has done all in his power, and has put the document beyond recall, actually outside of his own dominion. The technical requisite, possession in the donee, alone is lacking. The cases of gifts *inter vivos* where a delivery to A for B is held a good delivery to B are clearly in point, but it must be remembered that these decisions are not harmonious and that the courts might be loath to apply the relaxation of the law *inter vivos* to the *donatio*. The caution that led the Roman law to require five witnesses to perfect a gift in fear of death still lingers in our law and causes not only suspicion and strict scrutiny, but occasionally, at least, a tendency to cramp the rights of the donee.

THE USE OF ADJECTIVES IN TRADEMARKS. — An interesting phase of trademark law, so important in the present state of business competition, was presented last August to the Court of Chancery of New Jersey in *Levi* v. *Schoenthal*, 41 Atl. Rep. 105. The complainant owned a laundry styled, "Incomparable Laundry," and sought to enjoin his former employé from using the same adjective in advertising a rival business of precisely similar nature. A preliminary injunction was refused because of the complainant's laches; but the court, without committing itself, indicated clearly its line of thought on the point of